

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-600

YAKIMA INTERURBAN LINES ASSOCIATION–
ADVERSE ABANDONMENT–IN YAKIMA COUNTY, WA

Decided: February 6, 2004

By petition filed on December 23, 2003, Kershaw Sunnyside Ranches, Inc. (Kershaw) seeks a waiver of certain regulations pertaining to the Board's application procedures for obtaining abandonment authority. The waiver petition is related to an application filed on January 27, 2004, by Kershaw seeking the adverse abandonment of approximately one mile of the 11.29-mile Naches Line located between milepost 2.97 at Fruitville, WA, and milepost 14.26 at Naches, WA.¹ The line is owned by Yakima Interurban Lines Association (YILA). Yakima County, WA filed a pleading opposing the waiver request on December 29, 2003. In separate pleadings filed on January 6, 2004, and January 12, 2004, respectively, the Washington State Department of Transportation (WSDOT) and Level 3 Communications, L.C.C. (Level 3) concur with Yakima County's position.

Kershaw seeks a waiver of certain of the Board's notice requirements. It asks that the Board waive the requirements of: 49 CFR 1152.20(a)(3), pertaining to the posting of a notice of intent at agency stations and terminals; 49 CFR 1152.24(c), requiring service of the application on the governor and on certain state agencies; and 49 CFR 1152.20(a)(2)(xiii), requiring that notice be given to the

¹ Kershaw had previously filed certain components of its application. The application was not considered complete, however, until the applicant submitted the final required components on January 27, 2004. Among the final components submitted was a detailed description of the location of the one-mile segment sought to be abandoned. Because the exact location of the segment is not relevant to this waiver decision, the description is not included here. It will, however, be included in the subsequent Federal Register notice and abandonment decision. The Federal Register notice in this proceeding is due to be published on February 13, 2004.

labor organization of affected employees.² Kershaw argues that compliance with these notice requirements is onerous and infeasible for a third party applicant. It also claims that there are no employees on the affected rail line and no known labor organizations representing employees.

In addition, Kershaw seeks a waiver of several of the Board's requirements for the abandonment application. It requests waiver from the provisions 49 CFR 1152.22(a)(4), requiring a detailed map of the line, and (a)(5), pertaining to a system diagram map (SDM). It also asks that the Board waive the requirements of 49 CFR 1152.22(b), calling for a description of the condition of the properties, 49 CFR 1152.22(c), calling for a description of the service performed on the line, 49 CFR 1152.22(d), calling for revenue and cost data, 49 CFR 1152.22(f), requiring information on the environmental impact, and 49 CFR 1152.22(g), requiring information on existing passenger service on the line. Kershaw states that the information required in these provisions is either irrelevant to this proceeding or is unavailable.

Finally, Kershaw asks that the Board waive the requirements of 49 CFR 1152.24(f), requiring that it provide a consummation notice, and 49 CFR 1152.29(e)(2), imposing a 1-year time limit on any abandonment authority that the Board might grant. Kershaw states that it lacks control over the timing of consummation because, even if the Board grants abandonment authority, applicant still cannot consummate abandonment of the line until it obtains control of the property in state court.

In its reply, Yakima County opposes various aspects of the waiver petition. Yakima County argues that Kershaw's petition should be denied with regard to its request for waiver of the requirements in 49 CFR 1152.24(c), claiming that the notice requirements therein are not onerous or infeasible, and in 49 CFR 1152.22(f), claiming that Congress, by statute, and the Board, by regulation, have made environmental impact considerations relevant to this case. Yakima County also argues that Kershaw's petition should be denied with regard to its request for waiver of the notice of consummation requirement of 49 CFR 1152.24(f).

Kershaw also sought a waiver under 49 CFR 1002.2(e) from the Board's filing fee requirements. The Board's Secretary, the agency official delegated authority to rule on such requests, addressed the filing fee waiver request in a January 22, 2004 letter to Kershaw's attorney.

² Effective January 3, 2004, 49 CFR 1152.20(a)(2)(xiii) has been redesignated 49 CFR 1152.20(a)(2)(xii). In subsequent discussions in this decision, the new (redesignated) provision will be referenced.

DISCUSSION AND CONCLUSIONS

In appropriate instances, such as situations involving adverse applications, the Board and its predecessor agency, the Interstate Commerce Commission, have waived inapplicable and unneeded portions of the abandonment regulations.³ Kershaw correctly argues that many of the cited requirements seek information that it does not possess or that is not relevant to its adverse abandonment application. While waiver of certain information required by the Board's regulations is therefore appropriate here, the requested waiver of other provisions will be denied, as discussed below.

A waiver will be granted from the requirements of 49 CFR 1152.20(a)(3) [that notice be posted at agency stations], and 49 CFR 1152.20(a)(2)(xii) [that notice be sent to the labor organizations of affected employees]. There are neither agency stations on the line nor agency stations through which business for the line is forwarded or received, and no employees work on the line. However, a waiver from the requirements of 49 CFR 1152.24(c) [that a copy of the application be served on the governor, the public service commission, and the designated state agency] will be denied as unnecessary, because Kershaw has already complied with these requirements.

A waiver will be granted from the requirements of 49 CFR 1152.22(a)(4) [a detailed map of the line], 49 CFR 1152.22(a)(5) [pertaining to a SDM], and 49 CFR 1152.22(d) [pertaining to revenue and cost data]. A detailed map⁴ and revenue and cost data are unavailable to Kershaw, and it is not feasible for a third-party applicant to comply with the SDM requirement.

Waiver from the requirements of 49 CFR 1152.22(b) [a description of the condition of the properties], 49 CFR 1152.22(c) [a description of the service provided on the line], 49 CFR 1152.22(f) [information on the environmental impact], and 49 CFR 1152.22(g) [information on passenger service on the line] will be denied as necessary, because Kershaw has already provided sufficient information to satisfy these requirements.

³ See Napa Valley Wine Train, Inc. – Adverse Abandonment – In Napa Valley, CA, STB Docket No. AB-582 (STB served Mar. 30, 2001), and cases cited therein.

The Board generally asks that waiver of required information be sought prior to filing the application. Nevertheless, in its discretion, the Board may, as in this case, consider the waiver request and the completeness of the application concurrently.

⁴ Kershaw does attach maps of the county and property lines to its application at, respectively, Exhibits B and J.

A waiver from the requirements of 49 CFR 1152.24(f) [the filing of a consummation notice] will be denied. The Board finds it necessary to know if and when this line of rail is removed from its jurisdiction. Accordingly, applicant must immediately notify the Board in the event of such occurrence. However, a waiver from the provisions of 49 CFR 1152.29(e)(2), that set a 1-year authorization limit, will be granted.⁵ This provision presupposes control by the applicant over the timing of consummation once the Board's decision is issued. That is not the case in a third party abandonment because, as Kershaw correctly states, the applicant must generally invoke state law to obtain control of the property.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Kershaw's petition for waiver is granted in part and denied in part as described above.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

⁵ The requested waiver would of course apply only if the third party (or adverse) abandonment application is granted. The Board's decision to address the request for waiver of the consummation notice requirement under section 1152.24(f) and the 1-year authorization limit under section 1152.29(e)(2) at this early stage of the proceeding is not a prejudgment of the merits of the abandonment application.